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11 Attorneys for Defendant Mistras Group, Inc.

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 13 **UNITED STATES DISTRICT COURT**
 14 **EASTERN DISTRICT OF CALIFORNIA**

15 DAVID KRUEGER, individually and on
 16 behalf of all other similarly situated,

17 Plaintiff,

18 v.

19 MISTRAS GROUP, INC.; and DOES 1-50,
 20 inclusive,

21 Defendant.

CLASS ACTION

Case No.: 2:15-cv-01069-MCE-DAD

Hon. Morrison C. England, Jr.

**STIPULATION AND ORDER FOR COURT
 APPROVAL OF DISMISSAL WITHOUT
 PREJUDICE**

Complaint Filed: April 10, 2015

Removed: May 18, 2015

1 WHEREAS Defendant filed a Notice of Related Case on May 27, 2015, identifying the
2 related action: *Edgar Vicerol, et al. v. Mistras Group, Inc., et al.*, No. CGC-15-545291, proceeding
3 before the Honorable Edward M. Chen in the United States District Court, Northern District of
4 California (“*Vicerol*”). (ECF Docket No. 3.) *Vicerol* was filed on April 13, 2015 in the Superior
5 Court of California, County of San Francisco. (*Vicerol* ECF Docket No. 1.) *Vicerol* has been filed
6 as a collective action under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, (“FLSA”) and
7 as a class action. Specifically, *Vicerol* alleges that Defendant: (1) failed to pay overtime wages
8 pursuant to the federal Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*; (2) failed to pay
9 overtime wages pursuant to California Labor Code sections 510, 1194; (3) failed to authorize and
10 permit meal periods pursuant to California Labor Code sections 226.7, 510; (4) failed to authorize
11 and permit rest periods pursuant to California Labor Code section 226.7; (5) failed to provide
12 accurate wage statements pursuant to California Labor Code section 226; (6) failed to pay all
13 earned wages up on separation from employment pursuant to California Labor Code sections 200
14 through 203; (7) violated California Business and Professions Code sections 17200, *et seq.*; and
15 (8) violated the California Private Attorneys General Act, California Labor Code sections 2699 *et*
16 *seq.*

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19 WHEREAS Defendant also filed a Notice of Other Action or Proceeding on May 27, 2015
20 in the *Vicerol* action, alerting the Court and Parties of the *Krueger* action. (*Vicerol* ECF Docket
21 No. 4.)

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23 WHEREAS following the filing of these Notices, the Parties in both actions met and
24 conferred on numerous occasions to address the relationship and possible coordination of the
25 matters. The Parties agree that the parties and some of the substantive claims in this matter overlap
26 with the parties and substantive claims in the *Vicerol* case, and that coordination of the two matters
27 before a single Court is appropriate.
28

1 WHEREAS the Parties have agreed that *Krueger* will be combined with *Viceral* before the
2 Honorable Judge Chen in Northern District of California by way of filing an amended complaint in
3 *Viceral* and adding the *Krueger* parties, counsel, and claims to the complaint.

4 WHEREAS the Parties further agree that they must submit a stipulated request for
5 dismissal of the *Krueger* action pursuant to Federal Rules of Civil Procedure 23(e) and 41 in order
6 to successfully add the *Krueger* parties and claims to the *Viceral* action. Specifically, Rule 23(e)
7 provides, “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily
8 dismissed, or compromised only with the court’s approval.” FED. R. CIV. P. 23(e). Rule
9 41(a)(1)(A)(ii) further provides, “[s]ubject to Rule[] 23(e) . . . and any applicable federal statute,
10 the plaintiff may dismiss an action without a court order by filing: . . . a stipulation of dismissal
11 signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

12 WHEREAS the Parties now petition the Court to approve their request that the *Krueger*
13 action be dismissed without prejudice.

14 WHEREAS the Parties further request that the Court dismiss the case without a hearing
15 and without notice to class members because the dismissal will not prejudice the class. This matter
16 is largely duplicative of *Viceral*, and the *Viceral* action continues to proceed before Judge Chen in
17 the United States District Court, Northern District of California, notice of the pendency of *Krueger*
18 has not been provided to the class, and *Krueger* has not progressed to the class certification stage.
19 Succinctly, dismissal of this action will not prejudice the class because their claims are being
20 litigated in *Viceral*.

21 WHEREAS Plaintiffs will prepare a First Amended Complaint to be filed in *Viceral*,
22 adding the *Krueger* parties and claims, and circulate it to Defendant for its review. Defendant will
23 provide Plaintiffs with its written consent permitting Plaintiffs to file the First Amended
24 Complaint.

1 AND WHEREFORE the Parties stipulate and agree that:

2 The Court should dismiss the *Krueger* action without prejudice. The dismissal should be
3 without a hearing and without notice to class members because the dismissal will not prejudice the
4 class in light of the pendency *Viceral*.

5 A Proposed Order is included below to this stipulation for the Court's signature.

6 Respectfully Submitted,

7 Dated: September 4, 2015

Signed: /s/ Carolyn Hunt Cottrell
CAROLYN H. COTTRELL
SCHNEIDER WALLACE
COTTRELL KONECKY WOTKYNS LLP

8 Attorneys for Plaintiff David Krueger and the
9 Proposed Class

10 Dated: September 4, 2015

Signed: /s/ R. Keith Chapman
JOSEPH A. SCHWACHTER
R. KEITH CHAPMAN
LITTLER MENDELSON, P.C.

11 Attorneys for Defendant Mistras Group, Inc.

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19 **ORDER ON STIPULATION**

20 Having reviewed the Parties' request, pursuant to Federal Rules of Civil Procedure 23(e)
21 and 41, for Court approval of the voluntary dismissal without prejudice of *Krueger*, the Court
22 hereby **GRANTS** the Parties' request as follows:

- 23 1. The Court grants the Parties' request to voluntarily dismiss *Krueger* without prejudice;
24 2. The Court will dismiss the case without a hearing;
25 3. The Court will dismiss the case without providing notice to the class because:
26 a. Notice of pendency of the action has not been provided to the class, and the court
27 has not yet ruled on class certification; and


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b. Dismissal will not prejudice class members in light of the pendency of *Viceral*,
to which *Krueger* will be added.

The Court hereby dismisses the action without prejudice.

IT IS SO ORDERED.

Dated: September 8, 2015



MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT

SIGNATORY ATTESTATION

The e-filing attorney hereby attests that concurrence in the content of the document and
authorization to file the document has been obtained from each of the other signatories indicated
by a conformed signature (/s/) within this e-filed document.

Dated: September 4, 2015

Signed: /s/ Carolyn Hunt Cottrell
CAROLYN H. COTTRELL
SCHNEIDER WALLACE
COTTRELL KONECKY WOTKYNS LLP

Attorneys for Plaintiff David Krueger and the
Proposed Class